

**MINUTES  
of the  
FIFTH MEETING  
of the  
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**October 29-30, 2015  
New Mexico State University Alamogordo  
Alamogordo**

The fifth meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Zachary J. Cook, co-chair, on October 29, 2015 at 10:29 a.m. at New Mexico State University Alamogordo in Alamogordo.

**Present**

Rep. Zachary J. Cook, Co-Chair (10/29)  
Sen. Richard C. Martinez, Co-Chair  
Rep. Eliseo Lee Alcon  
Sen. Joseph Cervantes (10/29)  
Rep. Gail Chasey (10/29)  
Rep. Jim Dines (10/29)  
Rep. Rick Little  
Sen. Cisco McSorley  
Sen. Sander Rue (10/29)

**Advisory Members**

Sen. Peter Wirth (10/29)

**Absent**

Sen. Linda M. Lopez  
Rep. Georgene Louis  
Rep. Antonio Maestas  
Rep. Andy Nunez  
Rep. William "Bill" R. Rehm  
Sen. Lisa Torracco

Sen. Craig W. Brandt  
Sen. Jacob R. Candelaria  
Rep. Brian Egolf  
Rep. Doreen Y. Gallegos  
Sen. Daniel A. Ivey-Soto  
Rep. W. Ken Martinez  
Sen. Bill B. O'Neill  
Rep. Paul A. Pacheco  
Sen. William H. Payne  
Sen. John Pinto  
Rep. Patricia Roybal Caballero  
Rep. Patricio Ruiloba  
Sen. Michael S. Sanchez  
Sen. Mimi Stewart  
Rep. Christine Trujillo

**Guest Legislators**

Rep. David M. Gallegos (10/29)

Sen. Ron Griggs (10/29)

Rep. Debbie A. Rodella (10/29)

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)

Monica Ewing, Staff Attorney, LCS

Celia Ludi, Staff Attorney, LCS

Nancy Martinez, Intern, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

**Thursday, October 29**

Representative Cook welcomed committee members and guests to the meeting, and the committee members introduced themselves.

**Welcoming Comments**

Ken Van Winkle, interim president of New Mexico State University Alamogordo, said that the two-year institution serves the community through strong academics and vocational and technical certificate programs. The school's strategic plan is to retain students and ensure their success while focusing on diversity and resource stewardship. Dr. Van Winkle thanked the committee for visiting the campus.

**Judiciary's Unified Budget and Proposed Legislation**

Chief Justice Barbara J. Vigil of the New Mexico Supreme Court (NMSC) addressed the court's fiscal year 2017 budget and proposed legislation, including a constitutional amendment for the 2016 legislative session. The NMSC has three priorities for the coming fiscal year: 1) a workforce investment plan; 2) a modest base budget increase for the courts and the Administrative Office of the Courts (AOC); and 3) a request for additional judicial compensation.

Regarding the workforce investment plan, Justice Vigil said that there are salary inequities among employees of the Second Judicial District. The court formed a committee of members of the judiciary to examine the courts' employees' compensation across the state, and the committee developed the workforce investment plan. The plan aims to provide additional

support to court clerks, who comprise 50% of the courts' workforce. To reduce high court clerk turnover, the plan would provide for career and salary progression for clerks within their job classifications, which would cost \$2,621,690, and which would increase the average clerk's hourly pay from \$15.09 to \$17.52. Arthur W. Pepin, director of the AOC, added that 92% of court clerks are women, and they are being paid at a lower pay range than the pay range in which they are performing. Justice Vigil emphasized that if the courts reduce turnover, productivity will improve and fewer resources will be needed to repeatedly fill clerk vacancies.

The second part of the court's plan involves establishing a career progression plan for court employees. The plan would cost \$2,049,757 and would provide for employees to receive salary increases within their job classifications, based on their years of employment in those jobs.

The third part of the plan provides for a compensation increase for judges' at-will staff members, including paralegals, court administrators, court monitors, court reporters and bailiffs. The \$183,703 request would provide a 2% pay increase for those employees.

Finally, the court's plan provides for salary adjustments to remedy inequities among certain employees. It provides for a 3% increase for those employees and would cost \$1,229,448.

Mr. Pepin emphasized that the workforce investment plan was calculated using actual employee information, rather than estimates. Justice Vigil said that she was troubled to learn that many clerks' current salaries are at such a level that the clerks' families would qualify for the courts' indigency services.

A committee member suggested that the court seek assistance from the University of New Mexico's Bureau of Business and Economic Research to provide a report on how the increased investment in court personnel would affect the economy.

Another committee member asked whether recent changes to court data management systems are a concern. Justice Vigil said that the management system was a good investment and that clerks' skill sets have increased and improved through the operation of the system, and those skills have made the clerks more marketable as employees. Mr. Pepin added that public funds are wasted if the courts have to continue to recruit and train new clerks. Increasing clerks' pay would be a good investment.

In response to another committee member's question, Mr. Pepin said that the courts employ more than 700 clerks, about two-thirds in district courts and another one-third in magistrate courts. He said that the majority of court clerk work in the courts is completed by employees in court clerk 2 positions, and many clerks stay in that position for their entire careers. He added that there is a higher court clerk vacancy rate among magistrate courts than district courts.

In response to a question, Mr. Pepin said that all at-will employees in the same positions are paid the same salary.

In response to another committee member's question, Mr. Pepin said that court clerks received a pay increase in 2015, but the courts are still having difficulty retaining clerks. Clerk exit interviews reveal that low salaries are a primary issue.

Justice Vigil said that the court's second priority is a base budget increase of \$6,942,800 to support the courts' critical needs. Each court's needs are vetted through an internal process, and the resulting request is conservative. Mr. Pepin referred the committee to a spreadsheet titled "UNIFIED JUDICIARY FY17 BUDGET REQUEST SUPREME COURT ADOPTED" and said that because magistrate courts have lost operations funding from other state funds, an increase of general fund dollars is sought for those courts.

Justice Vigil said that the court's third priority is an increase of judicial compensation rates, which will cost \$1,432,300. It has been difficult to attract qualified and skilled candidates to careers in the judiciary because of low compensation rates. The courts seek lawyers who have approximately 15 years of experience to fill judicial vacancies, but the fact that New Mexico has the lowest rate of compensation for judges in the western states means that few lawyers are interested in filling vacancies.

In response to a committee member's question about the loss of funding for magistrate courts, Mr. Pepin said that in 2015, supplemental funding for those courts was approved by the legislature but was vetoed by the governor. Some funding was approved during the 2015 special session. He added that the AOC regularly reports the amount of revenue generated by magistrate courts through fines and fees to the Legislative Finance Committee.

Another committee member expressed support for the judiciary's budget requests and added that the committee member has litigated cases in other states and appreciates and prefers the efficiency of New Mexico's courts. He added that it is important to consider that the judiciary is a co-equal branch of government. Justice Vigil thanked the member and said that, among other things, the courts aim to address issues of public safety and issues of importance to the business community, which is not possible without sufficient resources.

Justice Vigil informed the committee of several pieces of legislation that the AOC will pursue in the 2016 session. The first bill adds another judgeship in the Fifth Judicial District. The second bill separates language access services from the Jury and Witness Fee Fund by creating the Language Access Fund and providing for the AOC to manage the two funds separately. The third bill creates the Judge Pro Tempore Fund, which provides for the hiring of retired judges and other personnel to resolve cases that active members of the judiciary cannot address.

In response to a question, Justice Vigil said that the court has created a subcommittee of the Chief Judges Council to consider and make determinations on where additional judgeships might be needed. The subcommittee considers the types of cases before courts and is considering whether population trends and frequency of pro se litigation should be factored into decisions.

### **Proposed Amendments to the Constitution of New Mexico (Article 2, Section 13) Concerning Bail**

Senator Wirth presented a proposed joint resolution to amend the Constitution of New Mexico. He said that the state's bail system has equated a defendant's risk with the ability to pay, and the joint resolution addresses a situation in which a defendant is proven to be a threat to the community by clear and convincing evidence and allows a judge to deny bail.

Regarding the NMSC's opinion in *State v. Brown*, Justice Charles W. Daniels, NMSC, said that the case provides an extensive history of the state's law governing bail but does not create new law. He said that fixed bond schedules used throughout the state are inconsistent, and the schedules do not factor in whether a defendant poses a risk of danger to the community. Because the state has strayed in its approach to bail from what the constitution requires, the court created a task force to study the issue. The task force recommended that the state's constitution be amended to give judges the power to deny release on bail. New Jersey has taken the same action, and the amendment received bipartisan support. Justice Daniels noted that the commercial bonding industry opposes the proposed amendment.

In response to a question about how often bail is denied in jurisdictions that have adopted the proposed amendment, Justice Daniels said that approximately 15% of defendants are held in pretrial detention. Senator Wirth reiterated that due process is afforded, and pretrial detention is only authorized after a hearing for which the clear and convincing evidentiary standard applies.

In response to another question, Justice Daniels agreed that human beings will administer the new rule, so there could be some variation in how the rule is applied, but he noted that defendants will have a right to appeal the denial of bail. He said that he believes judges will make reasonable decisions.

A committee member agreed that a defendant's financial means should not be a factor in whether the person is held before trial. The committee member asked whether New Jersey has seen increased recidivism rates after implementing this approach, and Justice Daniels said that New Jersey has not seen a change in recidivism rates.

In response to a committee member's question about the percentage of defendants that are currently held pending trial, Justice Daniels said that approximately 40% are held. He added that it is of concern that jails are often holding people who have mental and behavioral health concerns. Mr. Pepin noted that Bernalillo County has used money saved through the release of defendants who do not need to be held to create needed transitional housing and to work on providing intervention services. Savings could also be used to provide mental health services.

Justice Daniels added that, often, judges and prosecutors do not have sufficient information about a defendant at the time bail is considered. The NMSC is interested in finding a way to ensure that criminal information about defendants is available to courts.

A committee member expressed concern about implementing a program that provides for defendants' release in Albuquerque, a city that has 400 fewer police officers than it needs.

A committee member asked about the fiscal impact of passing the resolution. Senator Wirth said that fewer defendants held before trial would reduce some costs, but the hearings needed to determine whether defendants should be released will require additional resources.

A member asked whether the NMSC has taken action to stop courts from using bail schedules. Justice Daniels said that the NMSC is proceeding cautiously, and the AOC sent notice to courts that the use of bail schedules appears to violate the law. Judge George Anaya, Jr., a magistrate judge from Santa Fe, informed committee members that he is not currently using a bail schedule. Mr. Pepin said that about half of the state's courts are using bail schedules.

In response to a question, Justice Daniels said that the constitution gives the NMSC the right to create procedural rules. The court has created a standing committee on rules of criminal procedure, and that committee proposes changes to the court, after which the public has an opportunity to provide input before rules are changed. He said that there is a perception that the resolution seeks to eliminate the bail bond industry in New Mexico. That perception is not the intent of the resolution, which does not remove a judge's discretion to order a money bond for a defendant's release.

Regarding appeal of a decision to deny bail, Justice Daniels said that the Court of Appeals would consider such a case using the "abuse of discretion" standard. If the case was further appealed to the NMSC, the petition for certiorari would be decided within approximately one week. The member expressed concern about the number of appeals that could occur in cases in which bail is denied.

### **Response to Proposed Amendment to the Constitution of New Mexico Concerning Bail**

Jeffrey Clayton, attorney and policy director for the American Bail Coalition, acknowledged that the proposed constitutional amendment presents complicated issues, and those issues are a national political cause. He opined that the resolution would impair public confidence and said that the NMSC is charged with upholding the constitution and not with advocating or criticizing the constitution. He noted that Colorado considered implementing the proposed bail approach but ultimately did not. He added that New Jersey's model of bail costs that state \$60 million to \$100 million.

Mr. Clayton said that the Constitution of New Mexico currently strikes the right balance, and there is a lack of data to support the changes proposed in the resolution. Safety and cost-benefit analyses should be completed before New Mexico implements changes to the bail system.

He said that the assertion that many of the defendants who are held in jail are poor is without merit and that other reasons have been identified. Those reasons include the existence of multiple pending cases, immigration issues and others.

He added that there has not been a dispositive court ruling regarding a violation of the Equal Protection Clause of the United States Constitution in a case in which a defendant does not post bail. Mr. Clayton asked the court to delay its decision on support for the resolution for six months, and he offered his organization's assistance in considering the issue.

Angelica Herrera-Lucero, a representative of a bail bonding company, said that people are deterred from committing crimes by detention or fines, and one study has shown that pretrial services, in lieu of incarceration, are ineffective.

John Herrera, a representative of a bail bonding company, said that he has been in the business since 1969, and he does not believe New Mexico should adopt New Jersey's bail approach. Bonding companies take responsibility for their clients and ensure that they appear in court, or the bonding company suffers a financial loss.

Gerald Madrid, a representative of a bail bonding company, said that he served on the committee created by the NMSC to consider the state's bail process. He was one of two representatives from the bail bonding industry. Serving on the committee was interesting and also frustrating, he said. It is not reasonable to believe that defendants will appear in court without a secured bond in place, Mr. Madrid stated. The resolution allows the court to decide which defendants are dangerous and to release non-dangerous defendants. He opined that the *State v. Brown* decision is used by defendants to obtain unsecured release from jail. He believes that offenders are not deterred from committing drug and property crimes because they know that they will be released from jail.

Randy Gomez, a representative of a bail bonding company, agreed with the other bonding representatives and said that courts have used bail schedules for convenience. He said the important issue is how bail is set and the need for courts to consistently follow the rules of criminal procedure.

In response to a committee member's question, Mr. Gomez said that if one of his clients does not appear in court, the judge will issue a warrant for that person's arrest and declare forfeiture of the bond. If the bonding company is unable to bring the defendant to court, the company will have to pay the amount of the forfeited bond. Mr. Herrera said that while a bonding company will have to pay a forfeited bond if a client does not appear in court, no one is financially accountable for a person who is released without security and who fails to appear in court.

A committee member asked whether the presenters are concerned that the resolution will interfere with the bonding industry. Mr. Clayton said that the concern is with an increase of unsecured releases.

Representative Gallegos joined the panel of presenters and discussed several pertinent cases in Lea County. He asked that the proponents of the resolution work with him to develop a solution. His constituent, Judy Garcia, told the committee about one such case that involved her son, who had been shot. The defendants in that case have been released, and she said that safeguards need to be in place to protect the community from defendants who are released.

Rikki-Lee Chavez, New Mexico Criminal Defense Lawyers Association, and Matt Coyte, an attorney, presented concerns about the state's bail system. Mr. Coyte said that after careful thought and consideration, they have come to support the amendment. He noted that many people who are held pending trial in New Mexico are poor, and that is an unfair system.

Mr. Coyte provided the committee with a copy of a draft of a resolution that differed slightly from the draft presented by Senator Wirth. He said that in drafting their proposal, they focused on dangerous people and, therefore, specified that it related to people "pending trial for a felony offense". He noted that his organization also considered the concerns related to holding people who have mental health concerns, like many of the clients he has represented.

A committee member said that the proposed resolutions will increase the work of the Public Defender Department, and a representative of that office said that with a budget increase for the past fiscal year, the office has added staff positions, including a social worker and a paralegal.

In response to a committee member's question, Mr. Coyte said that he believes the change to the law should be in the constitution and not in rules because rules and underlying principles can change over time. His motivation is to find fundamental fairness, and the proposed language gives judges the ability to hold someone, if necessary, after a hearing.

Diana Martwick, district attorney for the Twelfth Judicial District, said that after discussion and debate, the New Mexico District Attorney's Association has given its support to Senator Wirth's proposed resolution. She noted that the justice system is underfunded, and the change to the constitution will increase the workload on already overworked district attorneys' and public defenders' offices. She said that it will be difficult to find time for the many additional hearings that will result from the change or for contacting victims to let them know that hearings have taken place. She suggested that more realistic time lines should be included.

#### **Juvenile Justice Advisory Committee (JJAC)**

Sharon Stover, chair of the JJAC, spoke to the committee about the JJAC, which supports evidence-based programming and alternatives to detention in the juvenile justice system. The JJAC reviews applications for funding from organizations that provide youth services. The JJAC



makes recommendations to the Children, Youth and Families Department on how funding might be allocated.

Ms. Stover said that the Juvenile Detention Alternatives Initiative has entered a memorandum of understanding with the NMSC and the New Mexico Association of Counties to further work on improving the juvenile justice system.

Judge Angie Schneider, Twelfth Judicial District, said that Otero County is the site of one of the state's 21 JJAC continuums. In March 2014, the JJAC surveyed stakeholders to determine what resources are needed in the juvenile justice system. She said that the Otero County JJAC continuum can work to obtain needed resources.

Carolyn Casillas, chief juvenile probation officer for the Twelfth Judicial District, said that the juvenile drug court was started in June 2014, and it is now considered a model for working with juveniles who use drugs. In an average week, clients participate in several sessions and breath alcohol tests, and clients' parents participate in parenting groups. Clients have an average of 12 contacts with the drug court team each week.

A former drug court participant informed the committee that the program was very helpful, and he noted that it needs additional funding to continue operations.

John Richmond said that he has served on the JJAC since 2011 as a youth representative. He has represented the state in Washington, D.C., and said that he enjoys working to make changes in the state.

Tony Ortiz, executive director of the New Mexico Sentencing Commission, said that as a result of juvenile justice programs, a significant number of youths are diverted from the criminal justice system.

Janet Musolf, JJAC program manager, said that she works to ensure accountability in the program. The JJAC has built strong relationships with the continuum communities and meets with communities before and during the continuum funding application process. After grants are made to continuums, the JJAC works with the continuums to help track funds and address any issues quickly so that services are not interrupted. Thirty-two percent of the programs are in urban areas, and 68% of the programs are in rural and frontier communities. Each community is unique, and she works with the continuums to identify their specific needs.

A committee member noted how important it is to hear perspectives from young people who participate in and benefit from juvenile justice programs.

### **Corrections Department (NMCD) Public Safety and Program Update**

Gregg Marcantel, secretary, NMCD, said that the state is positioned to make important decisions that can create meaningful changes. When he started with the NMCD in 2011, the

department did not have any programming for inmates in prison, and segregation of inmates had been overused for many years. In 2011, approximately 11% of the state's prison population was held in segregation at any given time. He added that the prison population was also increasing and infrastructure was suffering at that time.

Jerry Roark, director of the Adult Prison Division, NMCD, said that the department passed its audits successfully and exceeded established standards in 12 areas. He said that there are changes the NMCD needs to make to accommodate the growing female inmate population. The NMCD will begin housing female inmates in the western New Mexico facility and in the facility in Springer, New Mexico. The facility in Springer is better suited for programming and will allow for family visits and better records maintenance.

Currently 6.5% of the NMCD's inmates are held in restricted or segregated housing, and the NMCD's goal is to reduce that number to 5%. Another 7% of inmates are housed in protective housing. The NMCD's approach is to place predatory inmates in lockdown rather than placing those predators' victims in lockdown.

The NMCD has also changed its restrictive housing policy so that an inmate is no longer subject to 365 days in segregation for misconduct but is, instead, subject to up to just 30 days. If, after 30 days, the inmate is unable to leave segregation, the inmate is placed in predatory housing Mr. Roark said.

The facility in Clayton houses former gang members who have renounced their gang membership, Mr. Roark noted. The facility also houses former law enforcement officers.

Secretary Marcantel said that the department is committed to using segregation only for predatory inmates, and in other situations only when it is necessary. The NMCD is also looking at implementing programs recommended by the Pew Research Center, as well as those that have been developed within the NMCD. Regarding inmates in the state's sex offender management units, Secretary Marcantel said that those inmates who are within five years of release participate in programming every day.

Rose Bobchak, director of the Adult Probation and Parole Division, NMCD, said she has recently taken on the responsibilities of the director of recidivism reduction, and she is excited to use the opportunity to bridge gaps and expand department initiatives. In cooperation with the Pew Research Center, she has worked on a corrections program inventory to complete a cost-benefit analysis of the NMCD's programs. The NMCD may be able to redirect some program funding to those programs that produce the best outcomes.

Ms. Bobchak said that the Paws Program in the Las Cruces facility is an example of an innovative program that has been very successful. The program allows inmates to train dogs from a local shelter to help prepare the dogs for adoption. The facility has had no significant disciplinary reports about the participants in that program.

Studies show that peer tutoring is important, so the NMCD is looking to expand its peer tutoring programs. The department is also working to expand drug treatment programs in its institutions to help inmates maintain sobriety when they are released from a facility. Another initiative the department is working on would give inmates who are within 180 days of release the opportunity to have video conferences with their loved ones who are outside the prison to help with transitions. Finally, Ms. Bobchak said that the NMCD is opening a gender-specific housing unit in Los Lunas in cooperation with KC Quirk, director of Maya's Place and Crossroads for Women. When complete, the facility will have 50 beds.

Secretary Marcantel said that the department has access to a new drug to treat hepatitis C, but he added that the drug is very expensive. Over half of the prison population in the state tests positive for hepatitis C.

Finally, the secretary emphasized the importance of stabilizing the NMCD's workforce. He said that many employees are forced to work overtime, and there is a significant difference between staffing levels at privately run versus publicly run prisons in the state.

In response to a question about the transfer of female inmates to Springer, Secretary Marcantel said that the facility would be designed to support extensive programming. Mr. Roark added that the lowest-security female inmates would be housed in Springer.

A committee member asked whether inmates pay restitution to their victims, and Secretary Marcantel said that all inmates who work inside the prisons pay victim reparations.

In response to a committee member's question about how mental health concerns are diagnosed, Secretary Marcantel said that there are effective systems in place in the state's prisons to diagnose and treat mental health issues, but he noted that the same is not true in the state's jails.

### **Public Comment**

Parla Rathgeber provided comments about the day's bail bond presentations. He said that a judge once required a \$1 million cash-only bond for his release even though he had no criminal history and no prior convictions. He believes the bail requirement was politically motivated. While he was held in jail, he was assaulted, and he entered a plea agreement only so he could be released. He added that medical services are lacking in prisons, and while he was incarcerated, another inmate died of a ruptured appendix. Finally, he said that the family visiting areas are not hospitable.

Irene Whitehead said that she is the mother of an inmate in a special management unit in the Otero County facility in Chaparral, and she relayed her observations of the facility. The facility was designed to house inmates for short terms, and adjustments need to be made now that inmates are held for longer terms in the facility. She agreed that the visiting areas are inhospitable, and visitors are not able to spend time outside with family members because it is

often very hot outside and there is no shade provided. She said that her son's pod houses 72 men and includes only seven toilets and five telephones. Medical services are inadequate, she said, and an inmate has to request medical assistance three times before the inmate can see a medical professional. There is no hands-on job training at the facility.

Shelly Shaw said that her son is 32 years old and is homeless and living in Denver. She has tried to get her son's probation case transferred to New Mexico so her son can live with her, but she has been unable to transfer the case. A member suggested that she contact the NMCD for assistance.

Margarita Sanchez addressed several topics, including the state's medical marijuana laws and automatic voter registration. She expressed support for closing prison facilities and noted that because the NMCD is understaffed, the department would not have to lay off many employees. She also suggested that the committee hear presentations and perspectives from people who have been incarcerated.

#### **Recess**

The committee recessed at 6:57 p.m.

#### **Friday, October 30**

#### **Tour of the Otero County Prison Facility**

Members of the CCJ toured the Otero County Prison Facility in Chaparral.

#### **Adjournment**

There being no further business before the committee, the fifth meeting of the CCJ for the 2015 interim adjourned at 12:00 noon.